(2) Supreme Court, U.S.
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In The

Supreme Court of the United States

JOHN DOE I, JANE DOE, and JOHN DOE II,

Petitioners,

v.

BILL TANDESKE, Commissioner of the State of Alaska Department of Public Safety and GREGG RENKES, Attorney General of the State of Alaska,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Alaska's sex offender registration act, Alaska Stat. § 12.63.010 *et seq.*, requires persons long ago convicted, released and reintegrated to register with the authorities for life and to have personal and private information disseminated to the public. The private information disseminated to the public is not limited to private information belonging to the registrant, but included information belonging to members of the registrant's family. Does the Act, as applied to petitioners, violate the substantive component of the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

LIST OF PARTIES

1. The petitioners, John Doe I and John Doe II are pseudonymously named persons who were convicted of a sexual offense in the State of Alaska, and who have been unconditionally released and reintegrated into the community. Jane Doe (pseudonym) is the wife of John Doe I. She has never been convicted of a criminal offense.

2. Respondents are Bill Tandeske, who is the Commissioner of the State of Alaska Department of Public Safety and Gregg Renkes, who is the Attorney General of the State of Alaska. Mr. Tandeske and Mr. Renkes are charged with the duty of implementing and enforcing the Act challenged herein.

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Langan, P. A., & Levin, D. J., Recidivism of sex offenders released in 1994; Bureau of Justice Statistics Special Report (November 2003) 14

Silva: Dial, 1-900-PERVERT, and Other Statutory Measures That Provide Public Notification of Sex Offenders, 48 SMU. L. Rev. 1962 (1995) 7

OPINIONS AND ORDERS BELOW

The opinion of the court of appeals (App. 1a) is reported at 361 F.3d 594.

RELATED OPINIONS

This Court's opinion remanding to the court of appeals is reported as *Smith v. Doe*, 538 U.S. 84 (2003). The court of appeals amended opinion that was reversed by *Smith v. Doe* is reported at 259 F.3d 979.

JURISDICTION

The court of appeals issued its decision on 17 March 2004. This Courts jurisdiction is invoked pursuant to *28 U.S.C. § 1254(1).*

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment provides "No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . . "

The Alaska sex offender registration law, *Alaska Stat. §§ 12.63.010-12.63.100* and other pertinent provisions of the Alaska statutes and the Alaska Administrative Code are reproduced in the Appendix. (App. 5a).

STATEMENT OF THE CASE

In 1994, the Alaska Legislature enacted the Alaska Sex Offender Registration Act ("ASORA"), focusing on the purported need to infringe on the liberty of persons previously convicted of a sexual offense. (App. 5a, 1994 Alaska Sess. Laws, ch. 41, § 1). The ASORA specifically diminishes the right of privacy by stating it is "less important than the government's interest in public safety," and it infringes on those fundamental liberties protected by the 14th amendment, which are essential to the freedoms guaranteed by the Constitution of the United States. *Id.*

The ASORA compels the registrant to gather, collate and disclose information to the State so it may be included in a government information database labeling the registrant as dangerous persons to be avoided. *Alaska Stat. 11.51.100(a) (2) Alaska Stat. 47.10.011(7) Alaska Stat. 34.70.050.* In doing so, the ASORA creates a subclass of free citizens who have diminished liberty and privacy interests. (App. 9a, Alaska Stat. 12.63.020 (1998)).

The ASORA was intended as a means of supervising persons convicted of a sex offense and keeping a clearly definable group under the watchful eye of the State. (Minutes of Hearing Before House Judiciary Comm., 20th Alaska Legis., 1st Sess. (Jan. 27, 1997)). In fact, in amending the 1994 version of the ASORA, the legislature stated an intent to shorten the time between release from prison and registration so as to decrease the time sex offenders might be unsupervised. *Id.* This intent to keep persons previously convicted of a sex offense under supervision of the State is also clear from the face of the ASORA.

By threat of prosecution and imprisonment, the ASORA requires a person convicted of a sex offense to

gather, collate, verify, and deliver a variety of information about themselves and their crimes to the local state trooper post or police department. (App. 9a, Alaska Stat. 12.63.010(b) (1998)). While the State contends this information is already within the public domain, much of the information comes from sources protected through other state and federal laws such as State laws prohibiting access to motor vehicle records, and federal laws prohibiting access to medical and mental health records. Moreover, although the State claims the information is easily obtainable from its other information databases, it does not gather this information. Rather the ASORA compels the registrant's active participation by requiring the registrant to gather and collate the information on behalf of the State. *Id.* The ASORA even requires registrants to collect and release mental health records and provide information about identifying marks such as scars or tattoos. Upon delivery of the information, the individual must allow a photograph to be taken, and provide a set of fingerprints. *Id.* Once the initial registration is completed, registered persons are required to immediately report a change in their address, or a change in the motor vehicles they drive, or to which they have access or a change in their appearance. (App. 9a-11a, Alaska Stat. 12.63.010(c) (1998)). The Does are required to provide the same information four times per year for the rest of their lives, even if the information does not change. (App. 9a-13a, Alaska Stat. 12.63.010(d)(1), 12.63.020(a) (1998)).

The intent to keep registrants under the supervision of the State is also evidenced by the fact that, although the Does have had their civil rights restored and are no longer on State supervision, they are required by law to submit a DNA sample to the State upon demand. (App. 21a). No

warrant is required, and the State is not required to show probable cause for this search. *Id.* Thus, solely as a result of the ASORA and its provisions, the Does' fundamental and deeply rooted right to be free from warrantless search and seizure is infringed.[1]

Other provisions directly tied to the ASORA require disclosure of registration information during property transactions, and make it unlawful to leave a child in the care of a person required to register. *Alaska Stat. 11.51.100(a) (2) Alaska Stat. 47.10.011(7) Alaska Stat. 34.70.050.* Solely as a result of the ASORA, parental rights are infringed or terminated; rights which are fundamental and deeply rooted as one of the essential liberties protected by the 14th amendment.

By allowing unlimited public dissemination of personal information collected by registrants, registrants have lost housing, employment and suffered community condemnation, attacks and some have even been murdered. (App. 17a-18a, Alaska Stat. 18.65.087 (1998)). Moreover, a scarlet letter attaches when the State places a picture with a host of private information on the Internet with an inscription, "registered sex offender." http:// www.dps.state.ak.us/nSorcr/asp. Publishing registry information destroys the legal status of the previously convicted but a reintegrated free person by subjecting them to all sorts of burdens, costs, fees, loss of housing – loss of

[1] This statute is separately challenged in the U.S. District Court for the District of Alaska, however, it remains that DNA sample requirement is a direct result of the registration requirement.

employment – loss of public services – restrictions on interstate travel, and it infringes on the registrant's right to personal security. The registrants right to enjoyment of the community, like other community members, flows from the 14th Amendment, and it cannot be destroyed by the legislature upon any conception of the public welfare. The Constitution declares the principle upon which the public welfare is to be promoted, and opposing ones cannot be substituted without usurping the Constitution.

The ASORA contains no procedures through which one may escape its requirements, and no procedure is mandated or even available to determine the degree of risk posed by individual registrants before registration and periodic reporting is required or before information is released to the public. (App. 5a, 18a-19a). The information released to the public includes a photograph, name, home address, place of employment, crimes for which convicted, date and place of conviction, length of sentence, aliases, physical description, description of motor vehicles, license number of motor vehicles, vehicle identification numbers, and a description of scars and tattoos. (App. 18a-19a, Alaska Stat. 18.65.087(b) (1998)). All of this information has been gathered and delivered by the registrant, and some of the information produced by the registrant is protected by statute or privacy provisions. None of the information is gathered by the State. The description of motor vehicles is not limited to those owned by the registrant, but includes vehicles to which the registrant has access. *Id.* Under these onerous provisions, a registrant working as a clerk for a car rental company would presumably be required to list hundreds of vehicles belonging to his employer. *Id.* As applied, the ASORA places registrants under State supervision and they may be called to

the police station at the whim of the State or visited at home or work and required to answer questions or provide information. (App. 9a-10a, Alaska Stat. 12.63.010(d)(2) (1998)).

The effects of these laws on personal security and other fundamental rights, belonging to registrants and their families, that are deeply rooted in American tradition, are well documented. In a December 24, 2003 report from North Carolina a 22-year-old registered sex offender was fatally shot while entering his home.[2] In Kentucky, a December 6, 2003 report showed that police were investigating the murder of a 78-year-old registered sex offender who was murdered in his home.[3] In October 2003 a registered sex offender and his roommate were slain in Colville, Washington. Both were shot at close range with a shotgun.[4] Justin Fawcett was convicted of statutory rape when he had consensual sex with a fellow high school student. He had a promising career in the computer industry, but when he learned that he would be on the sex offender registration list for 25 years, he committed suicide.[5] The incidents of vigilantism, assaults, and murders of persons labeled as sex offenders by the State continue to mount and all are the result of public notification and the hysteria created by State officials in their zeal to support State registries.[6] The record in this case shows that wives

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[2] http://www.charleston.net/stories/122403/loc_24shotdead.shtml

[3] http://www.wave3.com/Global/story.asp?S=1553800&nav=0RZFJWWz

[4] http://seattlepi.nwsource.com/local/aplocal_story.asp?category=6420&slug=WA%20Two%20Dead

[5] http://www.theoaklandpress.com/stories/042704/loc_20040427048.shtml

[6] *See* http://www.geocities.com/eadvocate/issues/harm-society.html

have lost employment, children have been harassed and families have been harmed solely because of the public disclosure and label placed on the registrant by the State.

Reams of evidence have been developed showing the effect these registration laws have on the registrant's personal security, right to work, right to association, right to travel, and other rights which are inexorably intertwined with the concept of liberty protected by the Constitution. *Jerusalem: A framework for Post-Sentence Sex Offender Legislation, "Perspectives on Prevention, Registration, and the Public's 'Right' to Know;"* 48 Vand. L. Rev. 219, 245-46 (1995). This retributive, stigmatizing community environment has the opposite effect of rehabilitative treatment, which is the second proposed policy goal of these registration laws. *Id.* Public notification laws have created an atmosphere where vigilantism, and public condemnation is the norm, rehabilitation is the exception. *Silva: Dial, 1-900-PERVERT, and Other Statutory Measures That Provide Public Notification of Sex Offenders*, 48 SMU. L. Rev. 1962, 1983-84 (1995). Under the guise of protecting the public, these laws have been the cause of homes being burned, *Id.*, at 1983; of beatings, and of families being run out of town. *Id.*, at 1983-1984. Even small children have been harassed merely because their parent was once convicted of crime. *Id.* p. 1984.

REASONS FOR GRANTING THE PETITION

On remand from this Court, the court of appeals concluded that under *Washington v. Glucksberg, 521 U.S. 702, 727 (1997),* it was forced to conclude that persons who have been convicted of serious sex offenses do not have a

fundamental right to be free from registration and notification requirements set forth in the ASORA. (App. 3a). The court of appeals also concluded that it was precluded from granting any relief in light of *Smith v. Doe*, 538 U.S. 84 (2003) and *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003). (App. 3a, 4a).

In *Smith v. Doe*, 538 U.S. 84 (2003), the Court held that retroactive application of the ASORA did not violate the Ex Post Facto Clause of the U.S. Constitution. In reversing the court of appeals, the Court observed the argument, that a personal registration system for supposedly free persons resembled "probation and supervised release in terms of the restraint . . . has some force." 123 S.Ct. at 1152. While the Court rejected the claim that the degree of restraint rose to the level of punishment prohibited by the Ex Post Facto Clause, the Court underscored that rejection by noting that the conclusion, that such a liberty restricting scheme did not amount to a criminal sentence is different from saying that it would pass muster under the Due Process Clause. *Id.*, at 1152. The Court also recognized that other claims were viable, but it restricted its focus to the Ex Post Facto question, which was the only question then before the Court. *Smith v. Doe*, 123 S.Ct. at 1153.

In *Connecticut Dep't of Public Safety v. Doe*, 123 S.Ct. 1160 (2003), the Court assumed, without deciding, that registrants possess a liberty interest in their reputation that would be affected by the State's alteration of their legal status through the registration obligations. The Court did not seek to define the parameters of this liberty because it held that the question had to be analyzed as a question of substantive rather than procedural due process. 123 S.Ct. at 1164-65.

In both *Smith v. Doe* and *Connecticut Dep't of Public Safety v. Doe*, the Court recognized that there was merit to the argument that these registration and community notification laws infringe on fundamental liberties. However, the Court noted that the determination as to whether fundamental liberties were infringed had to wait for another day because the question was not presented to the Court in either of those two cases. This petition now squarely presents the question that was absent in both the *Connecticut* and *Smith* cases because this petition calls upon the court to define the limits of personal autonomy of the individual, and to what extent that personal autonomy is protected by the substantive component of the Due Process Clause. In this petition, the Court is called upon to determine the importance of individual autonomy and whether it includes freedom from interference and governmental monitoring or supervision. This case also calls upon the Court to define "liberty" in the context of the right to the pursuit of happiness, and in the context of the right to return to society and be a productive citizen without State sponsored labeling with a scarlet letter. In answering the central question presented, the Court must decide whether the liberty protected by the Due Process Clause is infringed when a reintegrated, free citizen is subjected to overly burdensome State laws that forever keep that individual under the shadow of his crime, forever keep that individual under suspicion, view, reporting on demand, and which prohibits a person from changing his residence, his job, his vehicle, or his hair color without notifying the State.

Although the Court in *Smith v. Doe* and *Connecticut Dep't of Public Safety v. Doe* held that the questions presented here had to be analyzed as a question of substantive

due process, 123 S.Ct. at 1164-65 the court of appeals provided no analysis whatsoever in reaching its decision on remand. (App. 1a). Rather, the court of appeals erroneously concluded that it was bound by *Connecticut Dep't of Public Safety v. Doe* and *Smith v. Doe*, two cases where the question presented was never decided because the question was not before the Court.

The court of appeals also held it was bound by the Court's decision in *Washington v. Glucksberg*, but that case analyzed the guarantees of the Due Process Clause within the context of the right to die. In doing so, the Court focused on two primary aspects: the protection of our nation's objective fundamental, historically rooted, rights and liberties; and the cautious definition of what constitutes a due process liberty interest. The Court held that the right to assisted suicide is not a fundamental liberty interest protected by the Due Process Clause since its practice has been, and continues to be, offensive to our national traditions and practices. Moreover, employing a rationality test, the Court held that Washington's ban was rationally related to the state's legitimate interest in protecting medical ethics, shielding disabled and terminally ill people from prejudice which might encourage them to end their lives, and, above all, the preservation of human life.

In reaching its cursory decision, the court of appeal ignored *Lawrence v. Texas*, 539 U.S. 558 (2003), where the Court stated that, as part of constitutionally protected liberty, homosexuals have "the full right to engage in private conduct without government intervention." In *Lawrence* the majority decision found that the intimate, adult consensual conduct was part of the liberty protected by the substantive component of the Fourteenth Amendment's Due Process

Clause. *Lawrence* holds that liberty protects the person from unwarranted government intrusions.

The instant case asks whether liberty includes unwarranted governmental monitoring, which included invasions into the family, the right to work, the right to negotiate contracts such as leases and property transactions, and the right to travel. *Lawrence* holds that freedom extends beyond spatial bounds and liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct. The instant case presents the question whether autonomy of the individual includes the right to be free after one has served his designated sentence and has been reintegrated into the community. Although *Lawrence* provided guidance with regard to the comprehensive analysis necessary to determine whether a particular provision offends the substantive component of the Due Process Clause, the court of appeals completely ignored *Lawrence* and chose to rely on two cases (*Connecticut Dep't of Public Safety v. Doe* and *Smith v. Doe*) where the specific question was neither presented nor answered, but where the Court held that the extent to which registration laws infringed on liberties had to be analyzed as a question of substantive due process.

This case presents another significant and important question. The Court has said that State granted liberty interests are protected by the procedural component of the Due Process Clause of the 14th Amendment. *Hewitt v. Helms*, 459 U.S. 460 (1983). Thus, the procedural component of the Due Process Clause protects liberties granted by State statute. The Court has also held that the 14th Amendment has a substantive component which protected rights that are deemed fundamental. *Lawrence*, *supra*.

The U.S. Constitution is not the exclusive donor of fundamental rights; rather, rights which are deemed fundamental may also flow from the rights granted in a State Constitution. *In re Welfare of T.K.*, 475 N.W.2d 88, 91 (Minn. 1991). The ASORA not only infringes upon rights which are deemed fundamental under the U.S. Constitution, it infringes on rights which are deemed fundamental under the Alaska Constitution. Nothing in the 14th Amendment limits application of the substantive component of the Due Process Clause to the protection of federally granted rights. Because the procedural component applies to State violation of State granted liberties, is it reasonable to conclude that the substantive component applies to protect fundamental liberties granted by a State Constitution? This petition presents that question.

Clearly the analysis given by the court of appeals to the important issues raised in this case is inconsistent with *Lawrence* and *Glucksberg*, both of which instruct that a careful, complete analysis of the liberties affected by the particular provision are required before deciding whether the particular provision before the Court offends Due Process. Moreover, the court of appeals reliance on *Connecticut Dep't of Public Safety v. Doe* and *Smith v. Doe* for the proposition that the question raised herein has already been decided was wrong because neither of those cases analyzed the issues in the context of a substantive due process question. The court of appeals made short shrift of the important questions before them, and failed to give the analysis necessary to determine first, whether any fundamental liberties were implicated by the ASORA, and second, whether the ASORA infringed on those fundamental liberties. (App. 1a). In fact, the court of appeals simply

ignored Jane Doe's claim that her federal right of privacy was infringed by the ASORA.

It is likely that the State, as previously, will inundate this Court with statistics about the threat posed by persons required to register in an attempt to convince this Court that the laws are justified because the public needs to be protected from the dire threat posed by persons required to register. Indeed, in both *Connecticut Dep't of Public Safety v. Doe* and *Smith v. Doe* the Court accepted, without examination, the statistics presented by the government. Statistics, however, are only as good as the methodology used to create them. Statistics are skewed by the prejudices of the individuals, or the monetary gain expected by the individuals who produced them. Analysis of the proffered statistics is important because "Recidivism," a seeming simple word meaning someone did it once and now again, is not that simple. Recidivism is actually defined by the person, researcher, state, industry, agency or other entity that uses the word in a particular study. While the essence of the definition is always retained (act done again), how that entity groups people to analyze recidivism, really defines recidivism for them. The police may take all people rearrested for crime and calculate a recidivism rate for rearrested persons and then they may take all people who are actually convicted again of the same crime for which they were previously convicted. Each of these methods will produce a different recidivism rate. This truth is illuminated by the most recent and most comprehensive studies since the Court decided *Connecticut Dep't of Public Safety v. Doe* and *Smith v. Doe*, which studies show that the recidivism statistics are not what the government previously represented, and which this Court adopted without analysis.

In a recent study in Canada, the reconviction rate for sex offenders who committed another sex offense was between 1 and 2 percent. *James Bonta, Tanya Rugge, Mia Dauvergne Solicitor General Canada The Reconviction Rate of Federal Offenders* (6-2003). In a recent comprehensive study released by the U.S. Department of Justice, Bureau of Justice Statistics, only 3.5% of those sex offenders released in 1994 were reconvicted for another sex crime. Langan, P. A., & Levin, D. J., *Recidivism of sex offenders released in 1994*; Bureau of Justice Statistics Special Report (November 2003). The latest 2003 statistics published by both the United States and Canadian governments, go to great lengths to explain how they have compiled their statistics, highly detailed, most likely because they realize there has been so much controversy and misconstruction of earlier published recidivism rates. The Canadian report mentioned this specifically.

This flexibility regarding the definition of recidivism, and the ability to skew or distort statistics compels the conclusion that the ability of a State to infringe upon the fundamental rights of individuals should not be justified based on statistics. To the extent the State argues otherwise, that should not form the basis for denying this petition.

Important rights are at issue in this case, which deserve careful analysis. The short shrift given to these issues by the court of appeal is inconsistent with decisions of this Court and many of the questions presented went unanswered. One such question was to what extent does the substantive component of the Due Process Clause protect fundamental rights guaranteed by a State Constitution. The Court has regularly held that state granted liberties are protected by the procedural component of the

14th amendment. *Wolff v. McDonnell*, 418 U.S. 539 (1974). It likewise follows that state granted fundamental rights are protected by the substantive component. Rather than decide these important questions, the court of appeals relied on its misinterpretation and misapplication of three decisions from this Court.

The court of appeals decision is inconsistent with decisions from this Court such as the decision in *Lawrence* because the question is not whether petitioners have a constitutional right to be free from registration and public notification. (App. 1a), *Lawrence*, *supra*. Rather, the question is whether in imposing that requirement does the statute infringe on fundamental liberties. The court of appeals obviously relied on the wrong legal standard in reaching its decision and thus, the court of appeals decision is inconsistent with decisions from this Court.

Finally, this Court has twice said that these registration laws should be analyzed under the substantive component of the Due Process Clause. Alaska's version of registration and public notification is one of the most sweeping in the nation, and petitioners know of no other cases working through the system that would present the opportunity for this Court to properly analyze these broad sweeping provisions as a question of substantive due process. *Connecticut Dep't of Public Safety v. Doe*, 123 S.Ct. at 1164-65. Accordingly,

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN DOE, I; JANE DOE; JOHN DOE II, *Plaintiffs-Appellants*, v. BILL TANDESKE; GREGG D. RENKES, *Defendants-Appellees*.	No. 99-35845 D.C. No. CV-94-00206-HRH OPINION

On Remand from the United States Supreme Court

Filed March 17, 2004

Before: Dorothy W. Nelson, Stephen Reinhardt, and Sidney R. Thomas, Circuit Judges.

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Kenneth M. Rosenstein, Assistant Attorney General, Anchorage, Alaska, for the defendants-appellees.

OPINION

PER CURIAM:

This is the second time this case has been before this court. *See Doe v. Otte*, 259 F.3d 979 (9th Cir. 2001), *rev'd and remanded, Smith v. Doe*, 538 U.S. 84 (2003). The first time, we overturned the district court's grant of summary judgment to the State and held that Alaska's sex offender registration and notification statute, 1994 Alaska Sess.

Laws 41, violated the Ex Post Facto Clause as to plaintiffs who were convicted of crimes before the enactment of the statute. *Otte,* 259 F.3d at 979. Our resolution of the Does' ex post facto claim made it unnecessary for us to decide at that time whether the Act violated plaintiffs' procedural and substantive due process rights. *Id.* at 982. However, the subsequent reversal of *Doe v. Otte* by the Supreme Court in *Smith v. Doe* now requires us to address those claims. The facts and the discussion of the relevant statutory provisions are set forth in *Doe v. Otte,* and accordingly, we proceed directly to our analysis.

I

The Does assert that Alaska's sex offender registration law violates their right to procedural due process because the Act deprives them of protected liberty interests without notice or the right to be heard.

In *Connecticut Department of Public Safety v. Doe,* 538 U.S. 1 (2003), the companion case to *Smith,* the Supreme Court considered the respondent's claim that Connecticut's sex offender registry law, Conn. Gen. Stat. §§ 54-251, 54-252, 54-254 (2001), violated his right to procedural due process because he was not a "dangerous sexual offender," and the Connecticut law "'deprive[d] him of a liberty interest . . . without notice or a meaningful opportunity to be heard.'" *Id.* at 6. The Court held that, even assuming, *arguendo,* that the respondent had been deprived of a liberty interest, procedural due process "does not require the opportunity to prove a fact that is not material to the State's statutory scheme." *Id.* at 4. Because "the law's requirements turn on an offender's conviction alone – a fact that a convicted offender has already had a procedurally

safeguarded opportunity to contest," the Court reasoned, "any hearing on current dangerousness is a bootless exercise." *Id.* at 7-8. The Court concluded that "States are not barred by principles of 'procedural due process' from drawing such classifications." *Id.* at 8 (emphasis removed).

Like the Connecticut law, Alaska's sex offender statute bases the registration and notification requirements on the sole fact of plaintiffs' convictions. Accordingly, bound by *Connecticut Department of Public Safety,* we hold that Alaska's sex offender registration law does not deprive the Does of procedural due process.

II

The Does also contend that Alaska's sex offender registration and notification requirements violate their Fourteenth Amendment right to substantive due process by infringing their fundamental interests in life, liberty, and the property. Again, we are bound by controlling Supreme Court law.

The Court has described the "fundamental" rights protected by substantive due process as "those personal activities and decisions that this Court has identified as so deeply rooted in our history and traditions, or so fundamental to our concept of constitutionally ordered liberty, that they are protected by the Fourteenth Amendment." *Washington v. Glucksberg,* 521 U.S. 702, 727 (1997). Under *Glucksberg,* we are forced to conclude that persons who have been convicted of serious sex offenses do not have a fundamental right to be free from the registration and notification requirements set forth in the Alaska statute.

While fundamental liberty interests require that any state infringement of these rights be "narrowly tailored to serve a compelling state interest," state actions that implicate anything less than a fundamental right require only that the government demonstrate "a *reasonable relation* to a legitimate state interest to justify the action." *Glucksberg,* 521 U.S. at 722 (emphasis added). As the Court has already determined in *Smith,* the statute's provisions serve "a legitimate nonpunitive purpose of 'public safety, which is advanced by alerting the public to the risk of sex offenders in their community.'" *Smith,* 538 U.S. at 102-03. Moreover, the Court held, the "broad categories" of offenses differentiated in the Act and the "corresponding length of the reporting requirement, are reasonably related to the danger of recidivism, and this is consistent with the regulatory objective." *Id.* at 102. Thus, although the Does possess liberty interests that are indeed important, *Smith* precludes our granting them relief.

Because we do not believe that *Glucksberg* and *Smith* permit us to reach any other result in this case, we conclude that the Alaska law does not violate the Does' rights to substantive due process.

III

For the foregoing reasons, we AFFIRM the district court's entry of summary judgment for the State.

STATUTES

1994 Alaska Session Laws ch. 41, § 1 provides:

The legislature finds that

(1) sex offenders pose a high risk of reoffending after release from custody;

(2) protecting the public from sex offenders is a primary governmental interest;

(3) the privacy interests of persons convicted of sex offenses are less important than the government's interest in public protection; and

(4) release of certain information about sex offenders to public agencies and the general public will assist in protecting the public safety.

1998 Alaska Session Laws ch. 106, § 25(a) & (c) provides:

APPLICABILITY. (a) A sex offender or child kidnapper with, before the effective date of this Act, (1) one conviction for an aggravated sex offense, (2) two or more convictions for a sex offense or child kidnapping, or (3) one conviction for a child kidnapping and one conviction for a sex offense, regardless of whether the offender or kidnapper has been unconditionally discharged from that conviction or convictions, shall register under AS 12.63.010, as amended by secs. 7 – 11 of this Act, by the 60th day after the effective date of this Act. A sex offender or child kidnapper with only one conviction for a sex offense that is not an aggravated sex offense or only one conviction for a child kidnapping, and who was unconditionally discharged from that

offense before July 1, 1984, does not have to register under this Act. A sex offender or child kidnapper with only one conviction for a sex offense that is not an aggravated sex offense or only one conviction for a child kidnapping who was required to register under sec. 12, ch. 41, SLA 1994, shall continue to register as provided by AS 12.63.010, as amended by secs. 7 – 11 of this Act.

1998 Alaska Session Laws ch. 81, § 22 provides:

APPLICABILITY OF SECTIONS 15 AND 16. (a) Except as otherwise provided in this subsection, a sex offender with only one conviction for a sex offense that is a violation of AS 11.41.460 or AS 11.61.127 who has been unconditionally discharged from that sex offense before July 1, 1984, is not required to register under or otherwise comply with AS 12.63. A sex offender who has been unconditionally discharged from a sex offense that is a violation of AS 11.41.460 or AS 11.61.127 on or after July 1, 1984, but before the effective date of this Act, shall register under and otherwise comply with AS 12.63 by July 1, 1998. A sex offender with two or more convictions for a sex offense or more than two convictions of AS 11.41.460 before a person under 16 years of age before the effective date of this Act, regardless of whether the sex offender was unconditionally released from the sex offenses before, on, or after July 1, 1984, who was not required to register under sec. 12, ch. 41, SLA 1994, shall register under and otherwise comply with AS 12.63 by July 1, 1998.

1998 Alaska Session Laws ch., 106, § 25, provides:

"APPLICABILITY. (a) A sex offender or child kidnapper with, before the effective date of this Act, (1) one conviction for an aggravated sex offense, (2) two or more convictions for a sex offense or child kidnapping, or (3) one conviction for a child kidnapping and one conviction for a sex offense, regardless of whether the offender or kidnapper has been unconditionally discharged from that conviction or convictions, shall register under AS 12.63.010, as amended by secs. 7 – 11 of this Act, by the 60th day after the effective date of this Act. A sex offender or child kidnapper with only one conviction for a sex offense that is not an aggravated sex offense or only one conviction for a child kidnapping, and who was unconditionally discharged from that offense before July 1, 1984, does not have to register under this Act. A sex offender or child kidnapper with only one conviction for a sex offense that is not an aggravated sex offense or only one conviction for a child kidnapping who was required to register under sec. 12, ch. 41, SLA 1994, shall continue to register as provided by AS 12.63.010, as amended by secs. 7 – 11 of this Act.

"(b) A conviction for a sex offense or child kidnapping before the effective date of this Act is a sex offense or child kidnapping for purposes of the duration of registration requirement of AS 12.63.020(a), as amended by sec. 12 of this Act.

"(c) In this section, "aggravated sex offense," "sex offender or child kidnapper," "sex offense," and "child kidnapping" have the meanings given in AS 12.63.100, as amended by secs. 14 – 16 of this Act."

Alaska Statute Sec. 11.56.835 provides:

Failure to register as a sex offender or child kidnapper in the first degree

(a) A person commits the crime of failure to register as a sex offender or child kidnapper in the first degree if the person violates AS 11.56.840

(1) and the person has been previously convicted of a crime under this section or AS 11.56.840 or a law or ordinance of this or another jurisdiction with elements similar to a crime under this section or AS 11.56.840; or

(2) with intent to escape detection or identification and, by escaping detection or identification, to facilitate the person's commission of a sex offense or child kidnapping.

(b) In a prosecution under (a)(2) of this section, the fact that the defendant, for a period of at least one year, failed to register as a sex offender or child kidnapper, failed to file the annual or quarterly written verification or changed the sex offender's or child kidnapper's address and did not file the required notice of change of address, is prima facie evidence that the defendant intended to escape detection or identification and, by escaping detection or identification, to facilitate the person's commission of a sex offense or child kidnapping.

(c) In this section, "child kidnapping" and "sex offense" have the meanings given in AS 12.63.100.

(d) Failure to register as a sex offender or child kidnapper in the first degree is a class C felony.

Alaska Statute Sec. 12.63.010 provides.

(a) A sex offender or child kidnapper who is physically present in the state shall register as provided in this section. The sex offender or child kidnapper shall register

(1) within the 30-day period before release from an in-state correctional facility;

(2) by the next working day following conviction for a sex offense or child kidnapping if the sex offender is not incarcerated at the time of conviction; or

(3) by the next working day of becoming physically present in the state.

(b) A sex offender or child kidnapper required to register under (a) of this section shall register with the Department of Corrections if the sex offender or child kidnapper is incarcerated or in person at the Alaska state trooper post or municipal police department located nearest to where the sex offender or child kidnapper resides at the time of registration. To fulfill the registration requirement, the sex offender or child kidnapper shall

(1) complete a registration form that includes, at a minimum,

(A) the sex offender's or child kidnapper's name, address, place of employment, date of birth;

(B) each conviction for a sex offense or child kidnapping for which the duty to register has not terminated under AS 12.63.020, date of sex offense or child kidnapping convictions, place and court of sex offense or child kidnapping convictions, whether the sex offender or child kidnapper has been unconditionally discharged from

the conviction for a sex offense or child kidnapping and the date of the unconditional discharge; if the sex offender or child kidnapper asserts that the offender or kidnapper has been unconditionally discharged, the offender or kidnapper shall supply proof of that discharge acceptable to the department;

(C) all aliases used;

(D) driver's license number;

(E) description, license numbers, and vehicle identification numbers of motor vehicles the sex offender or child kidnapper has access to regardless of whether that access is regular or not;

(F) any identifying features of the sex offender or child kidnapper;

(G) anticipated changes of address; and

(H) a statement concerning whether the offender or kidnapper has had treatment for a mental abnormality or personality disorder since the date of conviction for an offense requiring registration under this chapter;

(2) allow the Alaska state troopers, Department of Corrections, or municipal police to take a complete set of the sex offender's or child kidnapper's fingerprints and to take the sex offender's or child kidnapper's photograph.

(c) If a sex offender or child kidnapper changes residence after having registered under (a) of this section, the sex offender or child kidnapper shall provide written notice of the change by the next working day following the change to the Alaska state trooper post or municipal police

department located nearest to the new residence or, if the residence change is out of state, to the central registry.

(d) A sex offender or child kidnapper required to register

(1) for 15 years under (a) of this section and AS 12.63.020(a)(2) shall, annually, during the term of a duty to register under AS 12.63.020, on a date set by the department at the time of the sex offender's or child kidnapper's initial registration, provide written verification to the department, in the manner required by the department, of the sex offender's or child kidnapper's address and notice of any changes to the information previously provided under (b)(1) of this section;

(2) for life under (a) of this section and AS 12.63.020(a)(1) shall, not less than quarterly, on a date set by the department, provide written verification to the department, in the manner required by the department, of the sex offender's or child kidnapper's address and any changes to the information previously provided under (b)(1) of this section.

(e) The registration form required to be submitted under (b) of this section and the annual or quarterly verifications must be sworn to by the offender or kidnapper and contain an admonition that a false statement shall subject the offender or kidnapper to prosecution for perjury.

(f) In this section, "correctional facility" has the meaning given in AS 33.30.901.

Alaska Statute Sec. 12.63.020 provides.

(a) The duty of a sex offender or child kidnapper to comply with the requirements of AS 12.63.010 for each sex offense or child kidnapping

(1) continues for the lifetime of a sex offender or child kidnapper convicted of

(A) one aggravated sex offense; or

(B) two or more sex offenses, two or more child kidnappings, or one sex offense and one child kidnapping; for purposes of this section, a person convicted of indecent exposure before a person under 16 years of age under AS 11.41.460 more than two times has been convicted of two or more sex offenses;

(2) ends 15 years following the sex offender's or child kidnapper's unconditional discharge from a conviction for a single sex offense that is not an aggravated sex offense or for a single child kidnapping if the sex offender or child kidnapper has supplied proof that is acceptable to the department of the unconditional discharge; the registration period under this paragraph

(A) is tolled for each year that a sex offender or child kidnapper

(i) fails to comply with the requirements of this chapter;

(ii) is incarcerated for the offense or kidnapping for which the offender or kidnapper is required to register or for any other offense;

(B) may include the time a sex offender or child kidnapper was absent from this state if the sex offender or

child kidnapper has complied with any sex offender or child kidnapper registration requirements of the jurisdiction in which the offender or kidnapper was located and if the sex offender or child kidnapper provides the department with proof of the compliance while the sex offender or child kidnapper was absent from this state; and

(C) continues for a sex offender or child kidnapper who has not supplied proof acceptable to the department of the offender's or kidnapper's unconditional discharge for the sex offense or child kidnapping requiring registration.

(b) The department shall adopt, by regulation, procedures to notify a sex offender or child kidnapper who, on the registration form under AS 12.63.010, lists a conviction for a sex offense or child kidnapping that is a violation of a former law of this state or a law of another jurisdiction, of the duration of the offender's or kidnapper's duty under (a) of this section for that sex offense or child kidnapping. As a part of the regulations, the department shall require the offender or kidnapper to supply proof acceptable to the department of unconditional discharge and the date it occurred.

Alaska Statute Sec. 12.63.030 provides.

(a) If a sex offender or child kidnapper notifies the department that the sex offender or child kidnapper is moving from the state, the department shall notify the Federal Bureau of Investigation and the state where the sex offender or child kidnapper is moving of the sex offender's or child kidnapper's intended address.

(b) If a sex offender or child kidnapper fails to register or to verify the sex offender's or child kidnapper's address and registration under this chapter, or the department does not know the location of a sex offender or child kidnapper required to register under this chapter, the department shall immediately notify the Federal Bureau of Investigation.

Alaska Statute Sec. 12.63.100 provides:

In this chapter,

(1) "aggravated sex offense" means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit a sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph, "sexual offense" has the meaning given in AS 11.41.100(a)(3);

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

(iii) sexual abuse of a minor in the first degree; or

(iv) sexual abuse of a minor in the second degree; or

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under AS 11.41.410, 11.41.434, or a similar law of another jurisdiction;

(2) "child kidnapping" means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit kidnapping;

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit kidnapping if the victim was under 18 years of age at the time of the offense; or

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under AS 11.41.300, or a similar law of another jurisdiction, if the victim was under 18 years of age at the time of the offense;

(3) "conviction" means that an adult, or a juvenile charged as an adult under AS 47.12 or a similar procedure in another jurisdiction, has entered a plea of guilty, guilty but mentally ill, or nolo contendere, or has been found guilty or guilty but mentally ill by a court or jury, of a sex offense or child kidnapping regardless of whether the judgment was set aside under AS 12.55.085 or a similar procedure in another jurisdiction or was the subject of a pardon or other executive clemency; "conviction" does not include a judgment that has been reversed or vacated by a court.

(4) "department" means the Department of Public Safety;

(5) "sex offender or child kidnapper" means a person convicted of a sex offense or child kidnapping in this state or another jurisdiction regardless of whether the conviction occurred before, after, or on January 1, 1999;

(6) "sex offense" means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit a sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph, "sexual offense" has the meaning given in AS 11.41.100(a)(3);

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

(iii) sexual abuse of a minor in the first degree; or

(iv) sexual abuse of a minor in the second degree;

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction:

(i) AS 11.41.410 – 11.41.438;

(ii) AS 11.41.440(a)(2);

(iii) AS 11.41.450 – 11.41.458;

(iv) AS 11.41.460 if the indecent exposure is before a person under 16 years of age and the offender has a previous conviction for that offense;

(v) AS 11.61.125 or 11.61.127;

(vi) AS 11.66.110 or 11.66.130(a)(2) if the person who was induced or caused to engage in prostitution was 16 or 17 years of age at the time of the offense; or

(vii) former AS 11.15.120, former 11.15.134, or assault with the intent to commit rape under former AS 11.15.160, former AS 11.40.110, or former 11.40.200;

(7) "unconditional discharge" has the meaning given in AS 12.55.185.

Alaska Statute Sec. 18.65.087 provides:

(a) The Department of Public Safety shall maintain a central registry of sex offenders and child kidnappers and shall adopt regulations necessary to carry out the purposes of this section and AS 12.63. A post of the Alaska state troopers or a municipal police department that receives registration or change of address information under AS 12.63.010 shall forward the information within five working days of receipt to the central registry of sex offenders and child kidnappers. Unless the sex offender or child kidnapper provides proof satisfactory to the department that the sex offender or child kidnapper is not physically present in the state or that the time limits described in AS 12.63.010 have passed, the Department of Public Safety may enter and maintain in the registry information described in AS 12.63.010 about a sex offender or child kidnapper that the department obtains from

(1) the sex offender or child kidnapper under AS 12.63;

(2) a post of the Alaska state troopers or a municipal police department under this subsection;

(3) a court judgment under AS 12.55.148;

(4) the Department of Corrections under AS 33.30.012 or 33.30.035;

(5) the Federal Bureau of Investigation or another sex offender registration agency outside this state if the information indicates that a sex offender or child kidnapper is believed to be residing or planning to reside in the state or cannot be located;

(6) a criminal justice agency in the state or another jurisdiction;

(7) the department's central repository under AS 12.62; information entered in the registry from the repository is not subject to the requirements of AS 12.62.160(c)(3) or (4); or

(8) another reliable source as defined in regulations adopted by the department.

(b) information about a sex offender or child kidnapper that is contained in the central registry, including sets of fingerprints, is confidential and not subject to public disclosure except as to the sex offender's or child kidnapper's name, aliases, address, photograph, physical description, description of motor vehicles, license numbers of motor vehicles, and vehicle identification numbers of motor vehicles, place of employment, date of birth, crime for which convicted, date of conviction, place and court of

conviction, length and conditions of sentence, and a statement as to whether the offender or kidnapper is in compliance with requirements of AS 12.63 or cannot be located.

(c) Notwithstanding (b) of this section, if a sex offender has been convicted in this state or another jurisdiction of a sex offense identified as "incest," that offense may be disclosed under (b) of this section only as a "felony sexual abuse of a minor" conviction..

(d) The Department of Public Safety

(1) shall adopt regulations to

(A) allow a sex offender or child kidnapper to review sex offender or child kidnapper registration information that refers to that sex offender or child kidnapper, and if the sex offender or child kidnapper believes the information is inaccurate or incomplete, to request the department to correct the information; if the department finds the information is inaccurate or incomplete, the department shall correct or supplement the information;

(B) ensure the appropriate circulation to law enforcement agencies of information contained in the central registry;

(C) ensure the anonymity of members of the public who request information under this section;

(2) shall provide to the Department of Corrections and municipal police departments the forms and directions necessary to allow sex offenders and child kidnappers to comply with AS 12.63.010;

(3) may adopt regulations to establish fees to be charged for registration under AS 12.63.010 and for information requests; the fee for registration shall be based upon the actual costs of performing the registration and maintaining the central registry but may not be set at a level whereby registration is discouraged; the fee for an information request may not be greater than $10;

(4) shall remove from the central registry of sex offenders and child kidnappers under this section information about a sex offender or child kidnapper required to register under AS 12.63.020(a)(2) at the end of the sex offender's or child kidnapper's duty to register if the offender or kidnapper has not been convicted of another sex offense or child kidnapping and the offender or kidnapper has supplied proof of unconditional discharge acceptable to the department; in this paragraph, "sex offense" and "child kidnapping" have the meanings given in AS 12.63.100.

(e) The name, address, and other identifying information of a member of the public who makes an information request under this section is not a public record under AS 40.25.100 – 40.25.220.

(f) When a sex offender or child kidnapper registers under AS 12.63, the Department of Public Safety shall make reasonable attempts to verify that the sex offender or child kidnapper is residing at the registered address. Reasonable attempts at verifying an address include sending certified mail, return receipt requested, to the offender or kidnapper at the registered address. The department shall make reasonable efforts to locate an offender or kidnapper who cannot be located at the registered address.

(g) The department, at least quarterly, shall compile a list of those persons with a duty to register under AS 12.63.010 who have failed to register, whose addresses cannot be verified under (f) of this section, or who otherwise cannot be located. The department shall post this list on the Internet and request the public's assistance in locating these persons.

Alaska Statute Sec. 44.41.035 provides:

(a) To support criminal justice services in this state, the Department of Public Safety shall establish a deoxyribonucleic acid (DNA) identification registration system.

(b) The Department of Public Safety shall collect for inclusion into the DNA registration system a blood sample, oral sample, or both, from (1) a person convicted of a crime against a person or a felony under AS 11 or AS 28.35, (2) a minor 16 years of age or older, adjudicated as a delinquent for an act that would be a crime against a person or a felony under AS 11 or AS 28.35, if committed by an adult, (3) a voluntary donor, (4) an anonymous DNA donor for use in forensic validation, forensic protocol development, quality control, or population or statistical data bases, and (5) a person required to register as a sex offender or child kidnapper under AS 12.63. The department also may collect for inclusion into the DNA registration system a blood sample, oral sample, or tissue sample from crime scene evidence or from unidentified human remains. The DNA identification registration system consists of the blood, oral, or tissue samples drawn under this section, any DNA or other blood grouping tests done on those samples, and the identification data related to the samples or tests. Blood samples, oral samples, and tissue samples

not subject to testing under this section, and test or identification data related to those samples, may not be entered into, or made a part of, the DNA identification registration system.

(c) The Department of Public Safety may

(1) analyze DNA for law enforcement agencies; and

(2) assist law enforcement officials and prosecutors in the preparation and use of DNA evidence for presentation in court.

(d) Except as provided in (e) of this section, a local law enforcement agency may not establish or operate a DNA identification registration system unless

(1) the equipment and the DNA typing method of the local system are compatible with that of the state system under (a) of this section;

(2) the local system is equipped to receive and answer inquiries from the department's DNA identification registration system and transmit data to the department's DNA identification registration system; and

(3) procedure and rules for the collection, analysis, storage, expungement, and use of DNA identification data do not conflict with this section and procedures and rules applicable to the department's DNA identification registration system.

(e) Nothing in (d) of this section prohibits a local law enforcement agency from performing DNA identification analysis in individual cases to assist law enforcement officials and prosecutors in the preparation and use of DNA evidence for presentation in court.

(f) The DNA identification registration system is confidential, is not a public record under AS 40.25.110 – 40.25.140, and may be used only for

(1) providing DNA or other blood grouping tests for identification analysis;

(2) criminal investigations, prosecutions, and identification of human remains;

(3) statistical blind analysis;

(4) improving the operation of the system; or

(5) exoneration of the innocent.

(g) A person from whom a sample has been collected under this section may inspect and obtain a copy of the identification data regarding the person contained within the DNA identification registration system.

(h) The Department of Public Safety shall adopt reasonable procedures

(1) for the collection, analysis, storage, expungement, and use of the DNA identification registration system; and

(2) to protect the DNA identification registration system established under this section from unauthorized access and from accidental or deliberate damage by theft, sabotage, fire, flood, wind, or power failure.

(i) The Department of Public Safety shall, upon receipt of a court order, destroy the material in the system relating to a person. The court shall issue the order if it determines that

(1) the conviction or adjudication that subjected the person to having a sample taken under this section is reversed; and

(2) the person

(A) is not retried or readjudicated for the crime; or

(B) after retrial, is acquitted of the crime or after readjudication for the crime is not found to be a delinquent.

(j) The Department of Public Safety may adopt regulations to carry out the purposes of this section.

(k) The provisions of this section apply to a person from another state that this state has accepted under any interstate corrections or probation agreement or compact, regardless of whether the person is confined or released, if the person was convicted of an offense that is similar to an offense described in (b) of this section.

(l) The Department of Public Safety may not include in the DNA registration system a blood sample, oral sample, or tissue sample of the victim of a crime, unless that person would otherwise be included under (b)(1) – (5) of this section.

(m) The commissioner of public safety shall notify the president of the senate and the speaker of the house of representatives if, at any time after July 1, 2003, the federal government fails to pay the costs of the DNA identification registration system.

(n) In this section,

(1) "convicted" means that an adult, or a juvenile charged as an adult under AS 47.12 or a similar procedure in another jurisdiction, has entered a plea of guilty, guilty but mentally ill, or nolo contendere, or has been found guilty, or guilty but mentally ill, by a court or jury, regardless of whether the judgment was set aside under AS 12.55.085 or a similar procedure in another jurisdiction or was the subject of a pardon or other executive clemency; a person is not "convicted" if the judgment against the person was reversed or vacated by a court;

(2) "crime against a person" means an offense, or an attempt or solicitation to commit an offense, under AS 11.41;

(3) "oral sample" means a sample taken from the mouth of a person that consists of saliva or tissue, or both, as is determined by the Department of Public Safety to be necessary to obtain an accurate DNA identification and to otherwise achieve the purposes of this section.

HISTORY: (§ 2 ch 10 SLA 1995; am § 5 ch 44 SLA 2000; am § 1 ch 49 SLA 2001; am §§ 5 – 11, 14 ch 88 SLA 2003)

NOTES:
REVISOR'S NOTES. – In 2000, "AS 40.25.110 – 40.25.140" was substituted for "AS 09.25.110 – 09.25.140" to reflect the 2000 renumbering of AS 09.25.110 – 09.25.140.

Subsections (j) – (l), enacted as (k) – (m), were relettered in 2003, at which time § 14, ch. 88, SLA 2003, was codified as subsection (m), and former subsection (j) was relettered as subsection (n). Within subsection (n), paragraph (1) was added as paragraph (3) and renumbered in 2003 to alphabetize the terms.

CROSS REFERENCES. – For a statement of legislative purpose relating to the provisions of ch. 88, SLA 2003, that amend this section, see § 1, ch. 88, SLA 2003, in the 2003 Temporary and Special Acts. For transitional provisions applicable to development of regulations by the department under this section, see § 13, ch. 88, SLA 2003, in the 2003 Temporary and Special Acts.

EFFECT OF AMENDMENTS. – The 2000 amendment, effective May 12, 2000, in subsection (i) inserted ", upon receipt of a court order," and at the end of the introductory language added: "The court shall issue the order if it determines that."

The 2001 amendment, effective September 23, 2001, in subsection (b), added paragraph (2), redesignated former paragraph (2) as paragraph (3), and inserted ", a burglary, or a felony attempt to commit burglary," in paragraph (3).

The 2003 amendment, effective September 11, 2003, rewrote subsections (b) and (c); in subsection (f) rewrote paragraph (2), added paragraph (5), and made related stylistic changes; in subsection (n) added paragraph (1) and rewrote paragraph (2); added subsections (k) and (l); and, effective June 14, 2003, added subsection (j).

EFFECTIVE DATES. – Section 4, ch. 10, SLA 1995 makes this section effective January 1, 1996.

EDITOR'S NOTES. – Section 3, ch. 10, SLA 1995 provides that this section "applies to all convictions [for a crime against a person] occurring on or after January 1, 1996."

Section 2, ch. 49, SLA 2001, provides that the 2001 amendment of (b) of this section "applies to all convictions

and adjudications as a delinquent occurring on or after September 23, 2001."

Under § 12, ch. 88, SLA 2003, the changes made by ch. 88, SLA 2003, apply to all convictions or adjudications of delinquency included under (b) of this section, as amended by that Act, that occur on or after July 1, 2003, or that occurred before July 1, 2003, if the person is incarcerated or is under supervised probation or parole for the offense on or after July 1, 2003, and to all persons required to register as a sex offender or child kidnapper under AS 12.63 before, on, or after July 1, 2003.

ALASKA REGULATORY PROVISIONS

13 Ak. Admin. Code Sec. 09.025 provides:

(a) The department will approve or provide forms for an offender or a registration agency to submit registration information to the department, including

(1) initial registration information required under AS 12.63.010(b)(1);

(2) a photograph required under AS 12.63.010(b)(2);

(3) a set of fingerprints required under AS 12.63.010(b)(2);

(4) notice of change of address required under AS 12.63.010(c);

(5) annual or quarterly verification of registration information required under AS 12.63.010(d);

(6) proof of unconditional discharge date as provided in AS 12.63.020(a)(2)(A) and (C) and 12.63.020(b);

(7) proof of compliance with a sex offender registration program in a jurisdiction outside this state as provided in AS 12.63.020(a)(2)(B);

(8) proof that an offender is not physically present in this state as provided in AS 18.65.087(a);

(9) a request to review or have corrected information maintained in the registry about the offender as provided in AS 18.65.087(d);

(10) a request to appeal an adverse decision under (9) of this subsection.

(b) The department's forms will contain a notice that offenders who move out of this state must comply with registration requirements of their new locations.

(c) When an offender appears in person to submit information to a registration agency, the registration agency shall collect the information from the offender on a form approved or provided by the department. The registration agency shall review the completed form in the presence of the offender. If the form or any document submitted in connection with the form has obvious discrepancies, is incomplete, or is not legible, the registration agency may not accept the form until the offender makes all necessary corrections.

(d) When an offender submits a registration form to a registration agency without appearing in person, the registration agency shall review the form. If the form or any document submitted in connection with the form has obvious discrepancies, is incomplete, or is not legible, the registration agency will notify the offender of the need for corrections and may not accept the form until the offender makes all necessary corrections.

(e) If registration information is accepted by a registration agency, an offender is considered to have submitted the information on the date that

(1) it is delivered in person to a registration agency;

(2) it is postmarked, if mailed;

(3) delivery is documented according to written instructions on a registration form, if a method of delivery other than in-person or mail is approved by the department.

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13 Ak. Admin. Code Sec. 09.030 provides:

(a) Within 90 days after an offender registers under this chapter, the department will mail the offender a registration verification form that includes, based on the most recent information the department has obtained about the offender under AS 18.65.087(a),

(1) a statement of the duration of the offender's duty to register;

(2) an explanation of the annual or quarterly schedule by which the offender must submit registration verification information to the department for the duration of the offender's duty to register;

(3) the name of the offender's registration agency.

(b) If five or more years have passed since the date of an offender's registration photograph or there is another reason to believe the offender's appearance has changed significantly, a registration agency may instruct the offender in writing

(1) to appear in person at the registration agency to allow a photograph to be taken; or

(2) if authorized in writing by the department, to submit a new photograph without appearing in person.

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13 Ak. Admin. Code Sec. 09.040 provides:

(a) An offender shall, in complying with AS 12.63.010(c) and providing notice of change of residence, provide the offender's mailing address. The offender shall furnish the information on a form approved or provided by the department.

(b) For the purposes of AS 12.63.010, an offender is considered to have changed residence on the date that the offender leaves the residence without intending to return to continue living there, or the date that the offender has been away from the residence for 30 consecutive days, whichever occurs first.

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13 Ak. Admin. Code Sec. 09.044 provides:

The department will, upon its verification for accuracy and completeness, consider an offender to have submitted satisfactory proof of unconditional discharge upon receipt of a

(1) department form that includes the name, mailing address, and phone number of a court or correctional official who may be contacted by the department to confirm the offender's assertion of the unconditional discharge date; and

(2) copy of a court judgment, court order, certificate of unconditional discharge, letter, or other document signed by an employee of a court or correctional agency showing, for the offense for which the offender is required to register,

(A) the unconditional discharge date;

(B) the full statute or ordinance citation and descriptive title;

(C) the court case number, and

(D) if assigned by the court, the charge or count number.

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13 Ak. Admin. Code Sec. 09.046 provides:

For purposes of proving that an offender is not physically present in this state and that information about that person should be removed from the central registry established under AS 18.65.087(a), the department will, upon its verification for accuracy and completeness, consider the person to have submitted satisfactory proof when the person submits a department form that includes the signature of an official from

(1) a registration program in a jurisdiction outside this state verifying that the person is in compliance with the registration requirements of that program; or

(2) a government agency from a jurisdiction outside this state verifying that the person is physically present in that jurisdiction.

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13 Ak. Admin. Code Sec. 09.050 provides:

(a) The department will provide information in the central registry that is subject to public disclosure under AS 18.65.087 for any purpose, to any person, without charge, by posting or otherwise making it available for public viewing in printed or electronic form.

(b) The department will charge a fee of $10 for each request to provide

(1) a printed copy, including a photograph if its is [sic] available, of registry information about one registrant who is specified by name; or

(2) a printed copy of the list of all registrants in a geographical area; in this paragraph, "geographical area" means

(A) a municipality or village;

(B) an area designated by a single postal ZIP code; or

(C) a street name within a specified municipality or village.

(c) If the department determines that it is in the public interest, the department will reduce or waive the fee described in (b) of this section.

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13 Ak. Admin. Code Sec. 09.060 provides:

(a) Upon receiving a completed department form from a person asking the department to review or correct information maintained in the registry about that person, the department will respond in writing within 30 days. If

the request is denied, the department will state the reasons for the decision.

(b) An adverse response under (a) of this section may be appealed to the commissioner within 30 days after the person receives the response. The appeal must be in writing and must set out the reasons for the appeal. The commissioner will respond in writing within 45 days after receipt of the appeal.

(c) Repealed 11/3/99.

(d) Failure of the appropriate official to issue a response within the time limits described in (a) or (b) of this section is a denial of the request or appeal.

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13 Ak. Admin. Code Sec. 09.900 provides:

(a) In this chapter and AS 12.63, unless the context requires otherwise, "Alaska state trooper post" means a permanent office of the department's division of Alaska state troopers or division of fish and wildlife protection.

(b) In this chapter, unless the context requires otherwise,

(1) "conviction" has the meaning given in AS 12.63.100;

(2) "days" means calendar days;

(3) "department" means the Department of Public Safety;

(4) "offender" means a person required to comply with registration requirements under AS 12.63; "offender" includes both a sex offender and a child kidnapper;

(5) "offense" means a conviction for which a person is required to register under AS 12.63;

(6) "registration agency" means

(A) for an offender who is incarcerated in a state correctional facility, the state correctional facility in which the offender is incarcerated;

(B) for an offender who is not incarcerated in a state correctional facility

(i) if the offender's residence address is in Anchorage, the department's permits and licensing unit in Anchorage;

(ii) if the offender's residence address is outside of Anchorage, the Alaska state trooper post or municipal police department nearest to the offender's residence address;

(7) "registration program" means a system of registration that qualifies for federal funding under 42 U.S.C. 14071 (Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program Act);

(8) "state correctional facility" has the meaning given in AS 33.30.901;

(9) "unconditional discharge" has the meaning given in AS 12.55.185.

(c) In AS 18.65.087, "another reliable source" includes, upon verification by the department, the following:

(1) a court of another jurisdiction;

(2) the victim of the offense or a member of the victim's family;

(3) an employer of the offender;

(4) an acquaintance or a neighbor of the offender;

(5) a member of the offender's family.